

## **201 KAR 20:162. Procedures for disciplinary hearings pursuant to KRS 314.091.**

RELATES TO: KRS Chapter 13B, 314.011, 314.031, 314.071(4), 314.091, 314.161, 314.991

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.091(2) requires that an administrative hearing for the denial, limitation, probation, suspension, or revocation of the license of a registered or practical nurse be conducted in accordance with KRS Chapter 13B. This administrative regulation establishes procedures for conducting an administrative hearing.

Section 1. An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 2. Composition of the Hearing Panel. (1)(a) Except as provided in subsection (b) of this section, a disciplinary action shall be heard by a hearing panel consisting of two (2) members of the board, one (1) of which shall be a registered nurse, and a hearing officer, who shall be:

1. An assistant attorney general; or
2. Other attorney designated by the board.

(b) A hearing officer and one (1) member of the board may conduct a hearing for consideration of:

1. Reinstatement of a revoked or suspended license; or
2. Removal of a license from probationary status.

(2) A board member shall not sit on a panel or participate in the adjudication of a matter in which the member has:

- (a) Discussed the merits of the action with agency staff;
  - (b) Personal knowledge of the facts giving rise to the disciplinary action; or
  - (c) Participated in the investigation of a disciplinary action.
- (3) The hearing shall be transcribed by a court stenographer.

Section 3. Response to Charges. The licensee or applicant shall file with the board a written answer to the specific allegations contained in the notice of charges within twenty (20) days of receipt of the charges. An allegation not properly answered shall be deemed admitted. Failure to file an answer may result in the issuance of a default order pursuant to KRS 13B.080(6). The hearing officer shall for good cause permit the late filing of an answer.

Section 4. Rulings by a Hearing Officer. (1) The hearing officer shall rule upon each objection or motion, including an objection to evidence.

(2) A decision of the hearing officer may be overridden by a unanimous vote of the board members of the hearing panel.

Section 5. Recommendation by the Hearing Panel. (1) Upon the conclusion of the hearing, the panel shall retire into closed session for purpose of deliberations. Each board member of the panel shall have one (1) vote. In case of a tie vote, the tie shall be broken by the hearing officer.

(2) At the conclusion of the panel's deliberations, it shall propose an order based upon the evidence presented. The hearing officer shall draft a recommended order, as required by KRS 13B.110(1), that shall be:

- (a) Consistent with the panel's deliberations; and

(b) Submitted to the full board.

Section 6. Continuances; Proceedings in Absentia. The board shall not postpone a case which has been scheduled for a hearing absent good cause. A request by a licensee or applicant for a continuance shall be considered if communicated to the board reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer. The burden shall be upon the licensee or applicant to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

Section 7. Hearing Fee. If the order of the board is adverse to a licensee or applicant, or if the hearing is scheduled at the request of a licensee or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 314, a hearing fee in an amount equal to the cost of stenographic services and the cost of the hearing officer shall be assessed against the licensee or applicant. In a case of financial hardship, the board may waive all or part of the fee.

Section 8. Reconsideration of Default Orders. (1) A default order issued by the board may be reconsidered.

(2) The party in default shall submit a written motion to the hearing officer requesting reconsideration.

(3) The hearing officer shall schedule a hearing on the motion for reconsideration. The hearing officer may order that the default order be set aside if the party in default presents good cause.

(4) If a default order is set aside, the provisions of 201 KAR 20:161 shall apply. (12 Ky.R. 87; Am. 328; eff. 8-13-85; 14 Ky.R. 579; 1069; eff. 11-6-87; 17 Ky.R. 2760; eff. 4-11-91; 19 Ky.R. 2669; eff. 8-6-93; 22 Ky.R. 306; eff. 9-20-95; 24 Ky.R. 1755; 2111; eff. 4-13-98; 28 Ky.R. 679; eff. 10-17-2001; 35 Ky.R. 2791; eff. 8-12-2009; 37 Ky.R. 428; eff. 10-20-2010.)